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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/776,689  
Filing Date: February 11, 2004  
Appellant(s): DRESDEN, SCOTT

Mark P. Weichselbaum, Reg. No. 43,248  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/1/2010 appealing from the Office action mailed 11/3/2009.

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**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 8-14 are rejected and pending in the application. Appellant cancelled claims 1-7 in an amendment filed on May 21, 2008.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

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**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner.

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

20020053420	Duckett et al.	Mar. 20, 2003
20040176992	Santos et al.	Sep. 9, 2004
20030061305	Copley et al.	Mar. 27, 2003
7296080	Rowley et al.	Nov. 13, 2007
6877077	Hentzel et al.	Apr. 5, 2005

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**I. CLAIMS 8-11 ARE REJECTED UNDER 35 U.S.C. §103(A) AS BEING UNPATENTABLE OVER DUCKETT ET AL, U.S. PATENT PUBLICATION NO. 2003|0053420 ["DUCKETT"], IN VIEW OF SANTOS ET AL, U.S. PATENT PUBLICATION NO. 2004|0176992 ["SANTOS"], IN FURTHER VIEW OF COPLEY ET AL, U.S. PATENT PUBLICATION NO. 2003|0061305 ["COPLEY"].**

For the following claim mappings, all citations are to Duckett unless otherwise noted.

**Claim 8**

As to claim 8, Duckett as modified by Copley and Santos discloses a method for tracking and presenting information regarding the behavior of a plurality of users on a series of web pages, include the acts of:

displaying an initial content menu screen with at least one link [Copley, 0070];

when a content user chooses a desired link from the initial content menu screen, prompting the content user for statistical information when said content user chooses a desired link and storing said information on an electronic database [Copley, 0070 & Santos, 0027];

after the content user has successfully entered the statistical information, returning to a first content screen including links to a plurality of content screens [Copley, 0070: redirected back to the original page];

recording links selected by the user from first content screen as long as said users' choices are recordable [0022, 0024, 0126]; and

replaying the recording of at least one of the choices selected by the user in the perspective of the user and in correlation with the statistical information in a browser simulator

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[0156, 0194 – replay as a “virtual video” of the user interactions & Santos, 0016, 0017 – replaying based on demographic information].

As indicated in the foregoing mapping, Duckett does not expressly disclose the features related to the initial content menu screen. Duckett does not disclose displaying an initial content menu screen or that when a content user chooses a desired link from the initial content menu screen, prompting the content user for statistical information and storing the statistical information in an electronic database, or after successfully entering the statistical information, returning to a first content screen including links to a plurality of content screens. However, all three limitations were well known features in the art as evidenced by Santos and Copley.

Copley discloses displaying an initial content menu screen with at least one link [0070: Copley discloses an “original page”] and when a content user chooses a desired link from the initial screen, prompting the content user for statistical information [0070: “[u]pon execution” the user is redirected to a form asking about demographic data], and after successfully entering the statistical information, returning a first content screen [0070: user is redirected back to the original page after submitting demographic information]. Copley teaches the well known feature of requesting a user for personal information prior to delivering content to the user so as to obtain useful information about the user. It would have been obvious to one of ordinary skill in the art to have modified Duckett's method to include Copley's demographic information functionality so as to request the useful information from the user. Santos discloses that this information is especially useful in click-flow tracking methods such as those taught by Duckett and claimed by Applicant. For example, Santos discloses that demographic data obtained from a customer can be used to develop better simulations of web-page activity which provides better

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evaluations of a website [0014, 0027]. Therefore, one of ordinary skill in the art would have been motivated to modify Duckett's tracking system in order to provide better website simulations based on user demographic information. Additionally, Santos discloses replaying the recording of the users' choices in correlation with the statistical information [0016: replaying a session based on customer segments which is derived from the statistical demographic information collected from the user].

**Claim 9**

Duckett as modified by Santos and Copley discloses the act of recording the time said user takes between each link [Figure 6 - use of event time stamps].

**Claim 10**

Duckett as modified by Santos and Copley discloses said replaying step includes replaying a plurality of users' [0157 & Santos, 0016 – replaying a session for an entire customer segment].

**Claim 11**

Duckett as modified by Santos and Copley discloses said replaying steps includes selecting a criteria from said statistical information entered by said user [0183-0186 – selecting a filter & Santos, 0016 – selecting a specific customer segment such as “customers who are on a budget”].

**II. CLAIMS 12 AND 13 ARE REJECTED UNDER 35 U.S.C. §102(E) AS BEING ANTICIPATED BY SANTOS ET AL, U.S. PATENT PUBLICATION NO. 2004|0176992 ["SANTOS"], IN VIEW OF ROWLEY ET AL, U.S. PATENT NO. 7.296.080 ["ROWLEY"].**

All citations are to Santos unless otherwise noted.

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**Claim 12**

Santos discloses a method for tracking and presenting information regarding the behavior of a plurality of users on a series of web pages, include the acts of:

indexing a plurality of site visitors [0017, 0018: grouping customers by customer data and segmentation rules];

detecting an activation event caused by the site visitors [0027: detecting user's interactions with a website];

recording at least one action of each of the site visitors, and storing the at least one action in accessible electronic storage [0014, 0027: information stored in a database];

selecting an index criteria, said criteria based on criteria action from the at least one recorded action [0027: index criteria such as demographic information];

recalling all stored actions from all indexed recorded data matching the index criteria [0020, 0028: collecting all actions related to the same group of customers or customer segments];

statistically compiling said recalled stored actions [0016, 0020: statistically compiling the collection actions];

presenting said statistically compiled actions into at least one browser simulation [0016] being displayed on a display [*Rowley*, column 2 «lines 23-32» and column 7 «lines 52-63»].

Santos does not expressly disclose displaying the statistically compiled actions on a display. However, such a feature was well known in the art at the time of Applicant's invention as evidenced by *Rowley*. Like Santos, *Rowley* is directed to a system for using collected recorded user actions to simulate a network connection [*Santos*, 0014-0016 & *Rowley*, column 1 «lines 50-57»]. *Rowley* improves upon Santos' invention by including a display that allows



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users to graphically view the actions of the simulation. One benefit of a display is that it enables users to quickly navigate through the actions of the simulation [*Rowley*, column 7 «lines 15-17»]. Modifying Santos to include a display (to display Santos' statistically compiled actions) is merely an example of using a known technique (Rowley's display of a simulation of collected user actions) to improve similar devices (Santos' simulation of statistically compiled user actions) in the same way (allow users of Santos' system to view the simulation).

### **Claim 13**

Santos discloses said indexing step includes said timing of sub actions [0027: how long the customer typically accesses the site].

### **III. CLAIM 14 IS REJECTED UNDER 35 U.S.C. §103(A) AS BEING UNPATENTABLE OVER SANTOS AND ROWLEY, IN VIEW OF HENTZEL ET AL, U.S. PATENT NO. 6.877.007 [“HENTZEL”].**

All citations are to Santos unless otherwise noted.

Santos discloses a system for studying the behavior of visitors to an Internet site including:

an indexing system for identifying a plurality of visitors [0017, 0018: grouping customers by customer data and segmentation rules];

an event initiation module for triggering the recording of the browser behavior of each of the plurality of visitors [Figure 1 «item 20» | 0026: agent gathering the data when a customer starts browsing the website];

an event termination module for terminating the recording of the browser behavior [*Hentzel*, column 13 «lines 3-15»];

data storage coupled with said Internet site [Figure 1 «item 14»];

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a behavior organization module coupled with said data storage, said behavior organization module configured to retrieve selected recordings from said at least one recording and compile data representative of at least some of the visitors browser behavior, wherein said behavior organization module uses at least one criteria to select the selected recordings [Figure «item 16» | 0027: the mining system collects and aggregates the collected data based on customer segments]; and

a browser simulator configured to take data from said behavior organization module [Figure 1 «item 56» | 0016] and to display a browser simulation based on said compiled data representing the browser behavior of at least some of the plurality of visitors [*Rowley*, column 2 «lines 23-32» and column 7 «lines 52-63» (see rejection of claim 12 for motivation to combine)].

Santos does not expressly disclose an event termination module for terminating the recording of said browser behavior. However a module that terminates the recording of browser behavior was well known in the art at the time of Applicant's invention as evidenced by Hentzel. Like Santos, Hentzel is directed a system for tracking a user's interaction with web pages [abstract]. Hentzel discloses a termination module that terminates the recording of a browser's behavior [column 13 «lines 3-15»]. It would have been obvious to one of ordinary skill in the art to have modified Santos' tracking system to include a termination module as taught by Hentzel. The use of a termination module would improve Santos as it would provide a signal to Santos' tracking system to terminate the recording of the browser behavior.

**(10) Response to Argument**

**A. Claims 8-11**

Appellant argues that it would not have been obvious to have combined Duckett and Santos because they are directed to unrelated inventions (App. Br., pg. 9: “The teaching in Santos et al. is not related to the type of load testing performed in Duckett et al.). Appellant contends that “Santos et al. are not in any way concerned with testing the situation where a website is experiencing a heavy usage.” Appellant’s arguments should not be found persuasive for the following reasons.

1. Duckett and Santos are both directed towards evaluating websites by recording and then replaying user interactions.

Both Duckett and Santos disclose evaluating websites by recording user interactions and replaying the user actions in a simulation (e.g., Duckett, 0081-0083 and Santos, 0016). Duckett merely discloses recording and then subsequently replaying user choices (Duckett, 0157) but not in correlation with any statistical information. Similarly, Santos teaches recording [Santos, 0014: “data may be collected automatically, based on customers’ interactions with the website”] and replaying user choices [0014: creating a behavior model from the collected data and simulating sessions with the website using the behavior model].

Santos improves upon Duckett’s invention by organizing the recorded user interactions into segments or demographics prior to replaying the user behaviors (Santos, 0014). In other words, where Duckett discloses simply replaying recorded actions, Santos discloses replaying *organized* recorded actions, i.e., recorded actions correlated to specific segments or demographics.

Santos' demographics reads on Applicant's claimed statistical information. Santos' teaching of replaying collected user actions in correlation with the organized demographics therefore reads on Applicant's limitation.

2. Appellant's argument incorrectly focuses on how Santos and Duckett use their inventions.

Despite the foregoing similarities between Santos and Duckett, Appellant incorrectly focuses on how Santos and Duckett *use* their inventions. In particular Appellant argues that Santos' invention is directed to an "objective rating system that rates each website for different segments of customers" (App. Br., pg. 9) while Duckett's system is directed towards load testing.

The mere fact that Santos uses recorded user interactions for evaluating and rating websites while Duckett uses recorded user interactions for load testing would not have deterred one skilled in the art from organizing Duckett's recorded user interactions into demographics as taught by Santos. As long as Santos' taught a benefit to organizing the recorded user actions in correlation with statistical information such as demographics, then one of ordinary skill in the art would have been motivated to modify Duckett's unorganized recorded user actions.

**B. Claims 12 and 13**

Appellant argues that for the combination of Rowley and Santos to be proper, "Rowley al. el [sic] would need to teach displaying the behavior model of Santos et al" (App. Br., pg. 12). Appellant argues that Rowley does not disclose displaying the behavior model. Appellant's argument should not be found persuasive for the following reasons.

As noted by Appellant, Santos' behavior model comprises statistically compiled actions (App. Br., pg. 12) and therefore the model reads on Appellant's claimed statistically compiled

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actions. The rejection relied on Rowley to disclose a display that displayed a browser simulation of recorded user actions. Rowley's recorded user actions are analogous to Santos' behavior model because they also are an example of statistically compiled actions.

Like Santos, Rowley is directed to a system for compiling user actions to simulate a network connection (Santos, 0014-0016, Rowley, col. 2, ln. 66 to col. 3, ln. 7: "The method may be used *to simulate and display both previously stored and real-time network communications*" (emphasis added)). Rowley discloses displaying these recorded user actions during the simulation. Santos discloses recording user actions and storing them as a behavior model. Rowley improves upon Santos' invention by including a display that allows users to graphically view the actions of the simulation. One benefit of a display is that it enables users to quickly navigate through the actions of the simulation [Rowley, column 7 «lines 15-17»].

The rejection thus proposed modifying Santos to include Rowley's display functionality. The motivation to combine the references was based on the well-known benefits of having a display in a computer system which in this case would allow users to review the simulated actions [column 1 «lines 35-38»] and control the simulation [Fig. 7 | column 6 «lines 15-27»].

Modifying Santos to include a display (to display Santos' statistically compiled actions) is merely an example of using a known technique (Rowley's display of a simulation of collected user actions) to improve similar devices (Santos' simulation of statistically compiled user actions) in the same way (allow users of Santos' system to view the simulation). *See MPEP § 2143.*

**C. Claim 14**

Appellant argues that for the combination of Rowley and Santos to be proper, "Rowley et al. would need to teach a browser simulator configured to take data from a data mining system 16" (emphasis removed) (App. Br., pg. 16). Appellant argues that Rowley does not teach a display engine that is configured to take data from a data mining system. Appellant's arguments should not be found persuasive because Rowley does disclose a display engine that retrieves and then displays data from a behavior organization module coupled to data storage.

As noted by Appellant, Rowley discloses "a packet capture engine 104 that captures transmitted packets, *storing* the capture packets in accordance with the time interval of capture, by IP address, or by port number, a control engine that *sorts* the selected packets 200 into a protocol sorted list 300, a simulation engine that *obtains* the selected packets from the control engine 201, a display engine 206 that interprets the packets and displays a web page" (emphasis added) (App. Br., pg. 17).

Moreover, Rowley discloses that his display engine, which reads on the claimed browser simulator, retrieves recorded packets from the simulation engine (Fig. 2 «items 204, 206»). Rowley's packets read on the claimed data and the combination of the simulation engine and control engine read on the claimed "data mining system."

Rowley's control engine sorts, i.e., organizes, packets, sends it to the simulation engine, which then sends it to the display engine for display on a browser. Rowley's engines have the same functionality as the claimed behavior organization module that is described in the claim. The motivation to combine the references is the same as the motivation already described for claim 12, above.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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